



ISLAND COUNTY PLANNING & COMMUNITY DEVELOPMENT

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TO: Island County Planning Commission

FROM: Meredith Penny, Planning Manager

DATE: May 18, 2021

SUBJECT: Amendments to ICC 17.02B to address Growth Management Hearings Board Case No. 14-2-0009

Planning Commissioners:

On September 22, 2014 the Island County Board of Commissioners adopted new Fish and Wildlife Habitat protection regulations (ICC 17.02B). On June 24, 2015, the Growth Management Hearings Board (GMHB) issued an order in response to an appeal asserting that the County's update complied with the Growth Management Act with respect to four of the issues raised in the appeal, and did not comply with respect to seven other issues. Island County subsequently adopted ordinances C-44-16, C-71-16, and C-02-17 to address the remaining seven issues.

On July 14, 2017 the GMHB issued an order finding compliance and closing the case. This decision was appealed to superior court who upheld the GMHB's finding of compliance. Thurston County superior court's decision was then appealed to Division II Court of Appeals which then reversed the finding of compliance and remanded the matter back to the superior court to remand to the GMHB for further proceedings. The GMHB has provided the County until October 15, 2021 to address the remaining issues which are summarized below.

Natural Area Preserve (NAP) buffers

Island County has only one State designated NAP; a 33-acre site north of Camp Casey and Keystone Harbor known as the Naas, or Admiralty Inlet, NAP. The site is owned by the Whidbey Camano Land Trust (Land Trust) and jointly managed by the Land Trust and the State Department of Natural Resources (DNR).

Island County's most recently adopted code (ICC 17.02B.430.E) states:

Buffers shall not be required adjacent to these areas as long as these areas encompass the land required for species preservation. The Planning Department shall confirm the public agency establishing and managing the area has included

sufficient land within these areas to ensure no net loss of habitat functions and values. If buffers are required, they shall reflect the habitat sensitivity and the type and intensity of activity proposed to be conducted nearby.

The court of appeals found that the NAP provision when read as a whole, “*does not ensure the values and functions of NAP will be protected from external impacts by buffers. Instead, this provision strictly limits that protection to situations requiring ‘species protection,’ a limit that is contrary to the mandate of the GMA.*”

Designation of Westside Prairies, Oak Woodlands, and Herbaceous Balds

Island County’s most recently adopted code (ICC 17.02B.230.C) designates specific native prairies, herbaceous balds, and oak woodlands as habitats of local importance. The code references 12 of these habitats by name and references a map for general locations.

The court of appeals found that, “*Island County’s decision to include only a list and a map that is ‘not a survey,’ rather than performance standards or definitions, fails to meet the directive of the DOC guidelines for designation.*” They also note that the County, “*created an information gap that leaves these habitats vulnerable.*”

Western Toad

Island County’s most recently adopted code (17.02B.210) designates all presently-known and later-identified occurrences of western toad breeding sites as critical areas, as well as all upland occurrences known on the date the ordinance was adopted. Later-discovered upland western toad occurrences are not designated as critical areas. The code requires a biological site assessment (BSA) for any development project proposed within 1,000 feet of a critical area, though the County can waive this requirement if the impacts of the development would be minor.

The court of appeals found that, “*any occurrence of the western toad should be designated as a critical area*” and that, “*the Board misapplied the GMA’s best available science requirement by upholding the County’s decision that only those upland occurrences known to the County at the time the ordinance was adopted would be designated as critical areas.*” Additionally they noted the “*decision also violated the precautionary approach because the lack of scientific understanding regarding upland western toad habitat means upland occurrences should be designated and protected when they are discovered.*”

With regards to the ability of the planning director to waive the requirement for a BSA when only minor impacts are proposed, the court found this to be, “*contrary to law*” and reversed the Board’s ruling upholding the provision, “*allowing the County to waive the biological site assessment when the planning director determines development impacts will be minor.*”

Next Steps

Planning staff will be working with the Prosecuting Attorney's office to draft amendments to the Critical Areas Ordinance, ICC 17.02B, to address the above issues found non-compliant. These amendments will be brought to the Planning Commission and Board of County Commissioners in accordance with the following schedule:

May 24th – PC Workshop

June 14th – PC Workshop

June 16th – BOCC Workshop

July 12th – Planning Commission Public Hearing

August 4th – BOCC Workshop

August 17th – BOCC to adopt Planning Commission recommendation or schedule a separate public hearing

September 7th – BOCC Hearing if needed